

Case 2:15-cv-00066-LDD Document 1 Filed 01/08/15 Page 1 of 9 5-11-0066

I. (a) PLAINTIFFS

Kevin Toogood and Carol Toogood

DEFENDANTS

BAYADA Home Health Care, Inc.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Chester County, PA

(c) Attorneys (Firm Name, Address, and Telephone Number)

Eric F. Spade, Esquire, One South Broad Street, Suite 1830,
Philadelphia, PA 19107. (215) 772-0600

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Burlington County, NJ

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF DEF

1

Incorporated or Principal Place of Business In This State

PTF DEF

4

4

Citizen of Another State

PTF DEF

2

Incorporated and Principal Place of Business In Another State

PTF DEF

5

6

Citizen or Subject of a Foreign Country

PTF DEF

3

Foreign Nation

PTF DEF

6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		PERSONAL PROPERTY	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Nursing malpractice

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ Excess of \$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/8/2014

SIGNATURE OF ATTORNEY OF RECORD

1/25/14

FOR OFFICE USE ONLY

JAN - 8 2015

JAN - 8 2015

Address of Plaintiff: 203 WESTBROOK DRIVE, WEST CHESTER, PA 19382 15 66
Address of Defendant: 290 CHESTER AVENUE, MOORESTOWN, NJ 08057
Place of Accident, Incident or Transaction: 203 WESTBROOK DRIVE, WEST CHESTER, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases

(Please specify) _____

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
NURSING MALPRACTICE
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify) NURSING MALPRACTICE

ARBITRATION CERTIFICATION

(Check Appropriate Category)

ERIC F. SPADE, counsel of record do hereby certify:
Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 1/8/15

L.T.D./
Attorney-at-Law

90328

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/8/15

L.T.D./
Attorney-at-Law

90328

Attorney I.D.#

JAN - 8 2015

LDD-JD

CASE MANAGEMENT TRACK DESIGNATION FORM

KEVIN TOO GOOD

CIVIL ACTION

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v.
BAYADA Home HEALTH CARE, INC.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

1/8/15
Date

ERIK SPADE
Attorney-at-law

PLAINTIFF
Attorney for

215 772 0600
Telephone

215 772 0601
FAX Number

ESPADE@GMAIL.COM
E-Mail Address

(Civ. 660) 10/02

JAN - 8 2015

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LDL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KEVIN TOOGOOD,
As the Guardian under a Power of
Attorney, on behalf of,
CAROL TOOGOOD,
203 Westbrook Drive,
West Chester, PA 19382,

Plaintiff,

v.

BAYADA HOME HEALTH CARE, INC.,
290 Chester Avenue,
Moorestown, NJ 08057,

Defendant.

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CIVIL ACTION
NO.

TRIAL BY JURY DEMANDED

COMPLAINT

Plaintiff Kevin Toogood, as the guardian under a power of attorney, on behalf of Carol Toogood, by and through their undersigned counsel, Eric F. Spade, Esquire, and John M. Willis, Esquire, hereby bring this Complaint against Defendant Bayada Home Health Care, Inc., and in support thereof, avers as follows:

I. JURISDICTION

1. Jurisdiction is proper under 28 U.S.C. §§ 1332 because this is a civil action between citizens of different States.
2. The amount in controversy, exclusive of interest and costs, exceeds the sum of Seventy-Five Thousand (\$75,000.00) Dollars.

II. VENUE

3. All the claims herein arose within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania. Accordingly, venue is proper under 28 U.S.C.

§ 1391(b).

III. PARTIES

4. Plaintiff Kevin Toogood, as the guardian under a power of attorney, on behalf of Carol Toogood, are individuals residing in Chester County, Pennsylvania.

5. Defendant BAYADA Home Health Care, Inc., is a registered New Jersey corporation with its principal place of business located in Moorestown, New Jersey.

IV. FACTS

6. BAYADA is a licensed provider of home nursing care services.

7. In January 2013, Plaintiff became a patient of BAYADA home nursing services.

8. This lawsuit concerns a fall down accident that occurred at Plaintiff's home on or about January 28, 2013.

9. At all relevant times Plaintiff was a patient of the Defendant.

10. At all relevant times, Defendant acted and or failed to act through Defendant's employees and or agents acting within the scope of their employments.

11. At all relevant times, Defendant's employees and or agents were negligent and Defendant was negligent.

12. Defendant's are vicariously liable for the negligence of their employees and agents.

13. Plaintiff suffered a fall down accident while in the care of the Defendant on or about January 28, 2013.

14. The Defendant's nursing staff negligently cared for Plaintiff causing her to sustain a variety of injuries, including a broken hip.

15. Plaintiff was treated on or about January 28, 2013 at the emergency room of Chester County Hospital for the injuries she sustained while under Defendant's care.

16. Plaintiff was diagnosed with a broken hip at the emergency room of Chester County Hospital.

17. Plaintiff sustained severe and permanent injuries as the direct and proximate result of the Defendant's negligence.

COUNT I

**NEGLIGENCE - VICARIOUS LIABILITY FOR NEGLIGENCE
OF EMPLOYEES AND AGENTS - FALL DOWN INCIDENT
AGAINST ALL DEFENDANTS**

18. Plaintiff fully re-alleges and incorporates by specific reference the allegations contained in Paragraph 1 through 17 of this Complaint.

19. On January 28, 2013, Defendant employed Lisa Rocco, R.N.; Karen Worst, R.N.; Home Health Aid Nyree Richardson-Ray; and, other currently unknown caretakers.

20. Defendant's medical records for Plaintiff show that on or about January 28, 2013, Plaintiff was in the care of Lisa Rocco, R.N.; Karen Worst, R.N.; Home Health Aid Nyree Richardson-Ray; and, other currently unknown caretakers.

21. Defendant negligently deviated from the ordinary standard of care when they failed to adequately monitor and care for Plaintiff when they knew she was at risk for falling.

22. Defendant was negligent in their care of Plaintiff when they dropped her and/or allowed her to fall.

23. The Defendant's nurses were negligent in their care of Plaintiff when they dropped her and/or allowed her to fall.

24. The negligence of the Defendant was and is a factual cause of and/or the sole and proximate cause of Plaintiff's injuries and damages.

25. Plaintiff's injuries and damages include:

A. Serious injuries, dysfunctions, impairments, serious impairments of body or bodily functions, pain and trauma to various parts of the body and

psyche including injuries to the pelvis, a hip fracture, confusion, deconditioning, aggravation of other medical problems, trauma, restrictions on range of motion and function, pain and suffering, and or serious injuries and serious impairments of the body and or a bodily function;

- B. Past Medical Expenses;
- C. Future Medical Expenses;
- D. Past Pain and Suffering;
- E. Future Pain and Suffering;
- F. Past Embarrassment and Humiliation;
- G. Future Embarrassment and Humiliation;
- H. Past Loss of Ability to Enjoy the Pleasures of Life;
- I. Future Loss of Ability to Enjoy the Pleasures of Life; and,
- J. Incidental Costs.

WHEREFORE, Plaintiff Kevin Toogood, as the guardian under a power of attorney, on behalf of Carol Toogood, respectfully demands judgment against Defendant BAYADA Home Health Care, Inc., in an amount in excess of \$75,000 together with interest, costs, and such other relief as the Court deems fair and just.

COUNT II
NEGLIGENCE – CORPORATE NEGLIGENCE
AGAINST ALL DEFENDANTS

- 26. Plaintiff fully re-alleges and incorporates by specific reference the allegations contained in Paragraph 1 through 25 of this Complaint.
- 27. Defendant negligently deviated from the ordinary standard of care when they failed to adequately monitor and care for Plaintiff when they knew she was at risk for falling.
- 28. Defendant was negligent in their care of Plaintiff when they dropped her and/or allowed her to fall.

29. Defendant was negligent in hiring nurses who were negligent in their care of Plaintiff.

30. Defendant was negligent in failing to train and/or test and/or adequately train and/or test their nurse employees when they hired and continued to employ nurses who were negligent in their care of Plaintiff.

31. Defendant was negligent in failing to adequately promulgate, enforce and/or publish rules, regulations and/or guidelines when they hired and continued to employ nurses who were negligent in their care of Plaintiff.

32. The negligence of the Defendant was and is a factual cause of and/or the sole and proximate cause of Plaintiff's injuries and damages.

33. Plaintiff's injuries and damages include:

A. Serious injuries, dysfunctions, impairments, serious impairments of body or bodily functions, pain and trauma to various parts of the body and psyche including injuries to the pelvis, a hip fracture, confusion, de conditioning, aggravation of other medical problems, trauma, restrictions on range of motion and function, pain and suffering, and or serious injuries and serious impairments of the body and or a bodily function;

B. Past Medical Expenses;

C. Future Medical Expenses;

D. Past Pain and Suffering;

E. Future Pain and Suffering;

F. Past Embarrassment and Humiliation;

G. Future Embarrassment and Humiliation;

H. Past Loss of Ability to Enjoy the Pleasures of Life;

I. Future Loss of Ability to Enjoy the Pleasures of Life; and,

J. Incidental Costs.

WHEREFORE, Plaintiff Kevin Toogood, as the guardian under a power of attorney, on behalf of Carol Toogood, respectfully demands judgment against Defendant BAYADA Home Health Care, Inc., in an amount in excess of \$75,000 together with interest, costs, and such other relief as the Court deems fair and just.



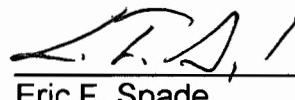
Eric F. Spade
THE SPADE LAW FIRM, LLC
One South Broad Street, Suite 1830
Philadelphia, PA 19107
(215) 772-0600
(215) 772-0601 (fax)
esrade@gmail.com

JOHN M. WILLIS, ESQUIRE
1515 Market Street, Suite 1510
Philadelphia, PA 19102

Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby demands a jury trial as to each Defendant and as to each count.



Eric F. Spade